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No. 04-881

IN THE

Supreme Court of the United States

JAMES LOCKHART,

Petitioner,

v.

UNITED STATES, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER ON BEHALF OF THE NATIONAL CONSUMER LAW CENTER, AARP, NATIONAL SENIOR CITIZENS LAW CENTER, AND THE NATIONAL ORGANIZATION OF SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES (NOSSCR)

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF AMICI INTEREST 1

SUMMARY OF ARGUMENT 3

INTRODUCTION 5

ARGUMENT 5

I. THERE IS A STRONG PUBLIC POLICY AND SOCIAL INTEREST IN ENSURING THAT SOCIAL SECURITY RECIPIENTS RECEIVE THE BENEFITS TO WHICH THEY ARE ENTITLED 5

II. STATUTES OF LIMITATIONS ARE THE NORM IN CIVIL AND CRIMINAL CLAIMS 8

III. STATUTES OF LIMITATION ARE ESSENTIAL IN PROVIDING REPOSE FOR DEFENDANTS, FINALITY IN THE ADJUDICATION OF CLAIMS, AND AVOIDANCE OF STALE CLAIMS 9

IV. THE TEN YEAR TIME LIMIT DOES NOT PREVENT THE GOVERNMENT FROM RESOLVING STUDENT LOAN CLAIMS ON THE MERITS 12

V. THE GOVERNMENT'S INTEREST IN COLLECTING STUDENT LOANS IS NOT UNDERMINED BY A TEN YEAR LIMIT ON SOCIAL SECURITY OFFSETS 12

CONCLUSION 14

TABLE OF AUTHORITIES

CASES:

Adams v. Woods,
2 L.Ed.2d 297 (1805) 11

Barnhart v. Walton,
535 U.S. 212 (2002) 1

Beno v. Shalala,
30 F.3d 1057 (9th Cir. 1994) 13

Campbell v. Haverhill,
155 U.S. 610 (1895) 10

Crown, Cork & Seal Co., Inc. v. Parker,
462 U.S. 345 (1983) 11

Dionne v. Bouley,
757 F.2d 1344 (1st Cir. 1985) 7

Giese v. Pierce Chemical Co.,
29 F.Supp.2d 33 (D.Mass. 1998) 9

Guillermety v. Secretary of Education,
241 F.Supp.2d 727 (E.D. Mich. 2002) 2, 13

In re Buren, 725 F.2d 1080 (6th Cir.),
cert. denied, 469 U.S. 818 (1984) 7

Missouri, K. & T.R. Co. v. Harriman Bros.,
227 U.S. 657 (1913) 10

Philpott v. Essex County Welfare Bd.,
409 U.S. 413 (1973) 7

Pub. Interest Research Group of New Jersey v.
U.S. Metals Ref. Co., 681 F. Supp. 237
(D.N.J. 1987) 9

Riddlesbarger v. Hartford Ins. Co.,
74 U.S. 386 (1868) 10

Sims v. Apfel,
530 U.S. 103 (2000) 1

Toussie v. U.S.,
397 U.S 112 (1970) 10

U.S. v. Habig,
390 U.S. 222 (1968) 9-10

U.S. v. Incorporated Village of Island Park,
791 F.Supp. 354 (E.D.N.Y. 1992) 9

U.S. v. Marion,
404 U.S. 307 (1971) 10

U.S. v. Scharton,
285 U.S. 518 (1932) 10

Washington State Dept. of Social and Health Serv.
v. Guardianship Estate of Keffeler,
537 U.S. 371 (2003) 1

Wilson v. Garcia,
471 U.S. 261 (1985) 10

Wood v. Carpenter,
101 U.S. 135 (1879) 8, 10

CODES:

United States Code

10 U.S.C. § 843 (2003) 9
18 U.S.C. § 794(a) (1996) 8
18 U.S.C. § 2381 (1994) 9
18 U.S.C. § 3281 (1994) 8
18 U.S.C. § 3290 (1948) 9
20 U.S.C. § 1087(c) 11
20 U.S.C. § 1091a(a) 4, 5
31 U.S.C. § 3716 ..... 4, 8
31 U.S.C. § 3716(e)(1) 5, 8
42 U.S.C. § 407 ..... 5, 7
42 U.S.C. § 407(a) 7
42 U.S.C. § 407(b) 7

MISCELLANEOUS:

Social Security Act of 1935, Pub. L. No. 74-271, 49 Stat. 624 7

H.R. Rep. No. 615, 74th Cong., 1st Sess (1935) 7

Arloc Sherman & Isaac Shapiro, Social Security Lifts 13 Million Seniors Above the Poverty Line: A State by State Analysis, Center on Budget and Policy Priorities (Feb. 24, 2005). Available at http://www.cbpp.org/2-24-05socsec.htm 6-7

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Student Loan Law (2d ed. 2002 and Supp.) 2

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STATEMENT OF AMICI INTEREST

The National Consumer Law Center (NCLC), AARP, The National Senior Citizens Law Center and The National Organization of Social Security Claimaints' Representatives (NOSSCR) ("*amici*") are organizations that devote a considerable amount of work to protecting the financial independence of older and disabled persons.[1]

AARP is a national nonpartisan, nonprofit membership organization of more than 35 million persons age fifty and older dedicated to addressing the needs and interests of older Americans. Nationally, out of 46.4 million total Social Security beneficiaries in December 2002, 33.2 million people were age 65 or older. Social Security Bulletin, Annual Statistical Supplement, at 2 (2003), available at http://www.ssa.gov/policy/docs/statcomps/supplement/2003. Since many of AARP's members receive Social Security benefits, AARP is deeply concerned about the harm they could suffer if their benefits are not protected by a statute of limitations for educational debt. AARP has filed numerous briefs before this Court in cases involving Social Security benefits, including *Washington State Dept. of Social and Health Serv. v. Guardianship Estate of Keffeler*, 537 U.S. 371 (2003); *Barnhart v. Walton*, 535 U.S. 212 (2002); and *Sims v. Apfel*, 530 U.S. 103 (2000).

The National Consumer Law Center, Inc. (NCLC) is a Massachusetts non-profit corporation established in 1969 to conduct research, education, and litigation regarding significant consumer matters. One of NCLC's primary objectives is to assist legal

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[1] Pursuant to this Court's Rule 37.6, *amici* state that this brief was not authored in whole or in part by counsel for a party and that no one other than *amici* made a monetary contribution to the preparation or submission of this brief.

services attorneys, government agencies, and private attorneys in advancing the interests of their low-income and older clients in the area of consumer law. NCLC staff write sixteen legal treatises on various federal and state statutes affecting consumer law, including a manual on Student Loan Law (2d ed. 2002 and Supp.). This case is of great importance for NCLC's low-income clients, including many disabled and older Social Security recipients living on the financial margins and struggling to preserve financial independence. NCLC was co-counsel in a case similar to Petitioner's case, *Guillermety v. Secretary of Education*, 241 F.Supp.2d 727 (E.D.Mich. 2002).

The National Organization of Social Security Claimants' Representatives (NOSSCR) is a non-profit corporation. While most NOSSCR members are attorneys in private practice, others work in programs that provide free legal services to the poor. NOSSCR members regularly represent people claiming benefits or fighting reduction or termination of benefits (usually, but not always, disability benefits) in administrative proceedings before the Social Security Administration (SSA). Benefits have been provided by Congress under various provisions of the Social Security Act. NOSSCR members also file actions in federal court against the Commissioner of SSA (currently JoAnne B. Barnhart), appealing final administrative denial, reduction, or termination of such benefits. The outcome of this case will have serious implications for NOSSCR's disabled and elderly clients, many of whom have no other source of income than their Social Security benefits.

The National Senior Citizens Law Center (NSCLC) advocates nationwide to promote the independence and well-being of low-income elderly individuals and persons with disabilities. NSCLC advocates through litigation, legislative and agency

representation and assistance to attorneys and paralegals in field programs. The Social Security program is an important priority area for NSCLC because of Social Security's critical role in alleviating poverty among older Americans and people with disabilities. NSCLC has a particular interest in preserving Social Security benefits from creditors so that the benefits can fulfill their intended function of providing for the basic needs of beneficiaries.

Amici submit this brief in support of Petitioner to provide a context within which to view the offset of Social Security benefits to collect student loan debt and to evaluate the harm to older and disabled Social Security recipients if the government is allowed to implement these offsets without regard to any time limit.

SUMMARY OF ARGUMENT

It is critical to emphasize the narrow scope of this case. The case involves the government's interest in ensuring that Social Security payments receive special protection from creditors. These payments are lifelines for retired and disabled individuals who have earned their income through years of hard work.

The case is also about following the precedent in nearly every other area of law and enforcing a time limit or statute of limitations, in this case on the government's right to collect student loans through Social Security offsets. The time limit in this case is not strictly a statute of limitations since the ten year bar is an absolute restriction on the government's authority to offset benefits. However, the rationale for a time limit, as explained in this brief, is the same regardless of whether it is classified as a statute of limitations or something else. For the sake of

convenience, the terms "time limit" and "statute of limitations" are used interchangeably in this brief.

The time limit at issue in this case applies only to government collection of student loans through the use of Social Security offsets. The case is not about imposing a limit on the government's right to collect student loans using collection strategies other than offset. In fact, Petitioner acknowledges that the elimination of the statute of limitations for student loan collection, 20 U.S.C. § 1091a(a), allows the government to use tactics such as administrative wage garnishment and litigation without regard to a statute of limitations.

Further, the government's right to employ Social Security offsets as a collection tactic is not at issue in this case. Petitioner agrees that the government has this authority through the Debt Collection Improvement Act, 31 U.S.C. § 3716. The only point of controversy is whether the government must abide by the statutorily imposed time limit when using Social Security offsets to collect student loans.

Enforcing the time limit is correct both legally and practically. This is first because of the government's special interest in ensuring that Social Security recipients receive the funds to which they are entitled if they become disabled or when they retire. Second, statutes of limitation or time limits are the norm, rather than the exception, in nearly all areas of criminal and civil law. At a policy level, this Court and lower courts have consistently affirmed the importance of statutes of limitations. The basic principles of statutory construction plus fair and equitable policy should lead the Court to enforce the ten year time limit when the government seeks to collect student loans through Social Security offset.

INTRODUCTION

Petitioner James Lockhart is a disabled man who relies upon his monthly Social Security check and limited food stamp benefits to pay for his food and prescription medication. At the time he brought this lawsuit, Mr. Lockhart's income consisted of $874 in Social Security Disability (SSD) benefits and $10 in monthly food stamps. Following his sixty-fifth birthday in July 2003, he began receiving age-related Social Security benefits.

Mr. Lockhart is seeking to enforce the provision in the Debt Collection Improvement Act which clearly imposes a time limit on the government's ability to collect debts through seizure of Social Security funds. 31 U.S.C. § 3716(e)(1). Petitioner argues that the provision in the Higher Education Act, 20 U.S.C. § 1091a(a), authorizing collection of student loans without regard to the age of the loan does not overcome the special protection that Congress has afforded to Social Security payments in the anti-attachment statute, 42 U.S.C. § 407.

ARGUMENT

I. THERE IS A STRONG PUBLIC POLICY AND SOCIAL INTEREST IN ENSURING THAT SOCIAL SECURITY RECIPIENTS RECEIVE THE BENEFITS TO WHICH THEY ARE ENTITLED

In 2005, almost 48 million Americans will receive approximately $518 billion in Social Security benefits. Thirty million of these recipients are retired workers and 6.2 million are disabled. The other recipients are dependents or survivors of workers. Social Security Administration, Press Office Fact

Sheet, available at http://www.ssa.gov/pressoffice/basicfact.htm. The Social Security Administration reports that "Social Security is the major source of income for most of the elderly" and "[a]bout two-thirds of aged Social Security beneficiaries receive 50% or more of their income from Social Security." In fact, it is the only source of income for almost one-in-five older adults in the nation. Nat'l Comm. To Preserve Soc. Sec. & Medicare, *Social Security Primer* (May 2004) available at http://www.ncpssm.org/news/archive/ssprimer.

Social Security is also essential to help sustain workers that become disabled. The Social Security Administration reports that almost 30% of today's 20 year-olds will become disabled before reaching age 67 and 72% of the private sector workforce has no long-term disability insurance. Social Security Administration, Press Office Fact Sheet, available at http://www.ssa.gov/pressoffice/basicfact.htm.

Social Security benefits are critical in preserving a measure of financial independence for older and disabled workers. For example, Social Security benefits have a powerful poverty-preventing effect among the elderly. An analysis of Census data shows that nationwide, Social Security benefits lift nearly 13 million Americans age 65 and older above the poverty line. These figures reflect a three-year average for the period from 2000 through 2002. The data indicate that leaving aside Social Security income, nearly one of every two older persons — 46.8 percent — has income below the poverty line. Once Social Security benefits are taken into account, just one in twelve — 8.7 percent — is poor. Arloc Sherman & Isaac Shapiro, Social Security Lifts 13 Million Seniors Above the Poverty Line: A State by State Analysis, Center on Budget and Policy Priorities (Feb.

24, 2005). Also available at http://www.cbpp.org/2-24-05socsec.htm.

Affirming the importance of Social Security, Congress permitted creditors to seize portions of these payments only in limited circumstances and only when a law authorizing seizure explicitly overrides the general presumption against seizing payments. 42 U.S.C. § 407. The "anti-alienation" or "anti-attachment" provision of the Social Security Act, 42 U.S.C. § 407(a), was included in the original Social Security Act passed in 1935. Social Security Act of 1935, Pub. L. No. 74-271, 49 Stat. 624. The House Ways and Means Committee held hearings on the law but did not debate or otherwise clarify the meaning of the anti-alienation provision. *See* H.R. Rep. No. 615, 74th Cong., 1st Sess (1935). In 1983, Congress strengthened the immunity provided by this anti-attachment statute by mandating that: No other provision of law, enacted before, on, or after April 20, 1983 may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section. 42 U.S.C. § 407(b).

This Court has observed that section 407 "imposes a broad bar against the use of any legal process to reach all social security benefits." *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 417 (1973); accord *In re Buren*, 725 F.2d 1080, 1084 (6th Cir.), *cert. denied*, 469 U.S. 818 (1984). The anti-attachment provision recognizes that, because Social Security payments are intended to meet the beneficiaries' most basic needs, those funds must be immune from creditors—including government claims—unless Congress has expressly provided otherwise. *See In re Buren*, 725 F.2d at 1084 (citing legislative history); *Dionne v. Bouley*, 757 F.2d 1344, 1355 (1st Cir. 1985).

Until passage of the Debt Collection Improvement Act in 1996, the Secretary of Education had no authority to collect loan debts by seizing Social Security income payments. In the Debt Collection Improvement Act, Congress explicitly overrode the Social Security anti-attachment provision and authorized limited administrative offset of Social Security funds. 31 U.S.C. § 3716. Congress also imposed a number of constraints on these administrative offsets, including a provision that the offset does not apply "to a claim under this chapter that has been outstanding for more than 10 years." 31 U.S.C. § 3716(e)(1).

Thus, although Congress did allow government creditors to offset Social Security benefits, they also set specific limits on these actions, including a ten year time limit that must be respected and enforced.

II. STATUTES OF LIMITATIONS ARE THE NORM IN CIVIL AND CRIMINAL CLAIMS

Petitioner's argument for enforcing the ten year time limit against government student loan collectors is clearly in line with judicial and legislative decisions in all other areas of the law, both criminal and civil. This Court has repeatedly emphasized the importance of statutes of limitations, stating, for example that "Statutes of limitation are vital to the welfare of society and are favored in the law. They are found and approved in all systems of enlightened jurisprudence." *Wood v. Carpenter*, 101 U.S. 135, 139 (1879).

Despite the government interest in pursuing criminals, for example, statutes of limitations apply to nearly all federal criminal actions. The rare exceptions exist for those crimes that are punishable by death. 18 U.S.C. § 3281 (1994). These crimes include espionage and treason, 18 U.S.C. § 794(a)

(1996); 18 U.S.C. § 2381 (1994). Other rare exceptions to the statute of limitations norm are for the prosecution of persons charged with absence without leave or missing in time of war, 10 U.S.C. § 843 (2003) and for individuals "fleeing from justice." 18 U.S.C. § 3290 (1948).

With respect to civil claims, federal district courts have found that civil actions are subject to statutes of limitations in all but a few rare instances, including patent infringement actions not involving damages, *Giese v. Pierce Chemical Co.*, 29 F.Supp.2d 33 (D.Mass. 1998); citizen suits brought under environmental protection laws such as the Federal Water Pollution Control Act, *Pub. Interest Research Group of New Jersey v. U.S. Metals Ref. Co.*, 681 F.Supp. 237 (D.N.J. 1987); and suits for injunctive relief brought by the Attorney General under the Fair Housing Act, *U.S. v. Incorporated Village of Island Park*, 791 F.Supp. 354, 365 (E.D.N.Y. 1992).

Notably, these rare exceptions do not involve debt collection cases. It is virtually unprecedented not to set a time limit for debt collection.

The primary justifications for statutes of limitation fall into two categories: those relating to the benefits of repose and finality, and those advocating against the adjudication of stale claims.

III. STATUTES OF LIMITATION ARE ESSENTIAL IN PROVIDING REPOSE FOR DEFENDANTS, FINALITY IN THE ADJUDICATION OF CLAIMS, AND AVOIDANCE OF STALE CLAIMS

This Court values repose sufficiently to have held that criminal limitation statutes are "to be liberally interpreted in favor of repose." *U.S. v. Habig*,

390 U.S. 222, 227 (1968) (quoting *U.S. v. Scharton*, 285 U.S. 518, 522 (1932). Encouraging the government to offset Social Security in a timely manner provides beneficiaries at least some level of certainty that their benefits will be protected.

The second key justification for statutes of limitation is to help avoid adjudication of stale claims. In this case, encouraging the government to act within a prescribed time limit if it uses this extraordinary collection tool affirms the importance of Social Security benefits and the dangers to a recipient if claims are brought fifteen, twenty, thirty, even forty years after the recipient has allegedly incurred the debt. This Court has frequently noted the importance of prompt adjudication of claims. *Riddlesbarger v. Hartford Ins. Co.*, 74 U.S. 386, 390 (1868) ("The policy of these statutes is to encourage promptitude in the prosecution of remedies."); *Wood*, 101 U.S. at 139 (statutes of limitation stimulate activity and punish negligence); *Campbell v. Haverhill*, 155 U.S. 610, 617 (1895) ("[statutes of limitation] secure the prompt enforcement of claims"); *Missouri, K. & T.R. Co. v. Harriman Bros.*, 227 U.S. 657, 672 (1913) ("The policy of statutes of limitation is to encourage promptness in the bringing of actions").

Another major reason to avoid adjudication of stale claims is that evidence deteriorates over time. Statutes of limitation protect defendants from having to "defend themselves against charges when the basic facts may have become obscured by the passage of time" *Toussie v. U.S.*, 397 U.S 112, 114 (1970) and beyond the point where "there is an irrebutable presumption that a defendant's right to a fair trial would be prejudiced." *U.S. v. Marion*, 404 U.S. 307, 322 (1971). In affirming this rationale for time limits, this Court observed in *Wilson v. Garcia*, 471 U.S. 261, 271 (1985) that "A federal cause of action 'brought at

any distance of time' would be 'utterly repugnant to the genius of our laws.'" (quoting *Adams v. Woods*, 2 L.Ed.2d 297 (1805)).

It is also important to encourage the government to bring claims so that defendants are on notice that their Social Security payments are at risk. *See Crown, Cork & Seal Co., Inc. v. Parker*, 462 U.S. 345, 352 (1983) ("Limitations periods are intended to put defendants on notice of adverse claims and to prevent plaintiffs from sleeping on their rights"). Notification may prompt defendants to take action to preserve favorable evidence. Documentary evidence is generally essential in order to raise defenses in student loan cases. For example, the borrower may have defenses to collection such as forgery. Borrowers also have special defenses in cases where the school closed while the borrower was in attendance or other instances where a school official engaged in fraudulent behavior. *See, e.g.*, student loan cancellation rights at 20 U.S.C. § 1087(c). These defenses become increasingly difficult to raise as time passes and evidence is destroyed or lost. Defendants may also have defenses to the amount of debt sought or with respect to other terms of the loan. Again, as time passes, it is increasingly difficult to locate key documents such as promissory notes and enrollment agreements.

Application of the statute of limitations against offset also serves to protect the important individual interest in arranging financial affairs. An individual on a fixed Social Security income often lacks the flexibility to address and respond to diminution of benefits through offset since in many cases that person is unable to work or earn significant income through work.

IV. THE TEN YEAR TIME LIMIT DOES NOT PREVENT THE GOVERNMENT FROM RESOLVING STUDENT LOAN CLAIMS ON THE MERITS

A counterargument to statutes of limitations is that claims should be resolved on their merits. This concern is easily addressed in this case. Enforcing the time limit on Social Security offsets does not in any way preclude the government from bringing an action in court to resolve the merits of a case. Further, it does not prevent the government from utilizing extra-judicial collection strategies other than offset to collect student loan debt. For example, if Mr. Lockhart worked, the government could administratively garnish his wages. If Mr. Lockhart had any assets, the government could attach those assets after getting a judgment in court. Petitioner argues for the enforcement of a time limit only where the stakes are highest—when the government seeks to seize Social Security payments.

It is also important to note that if the government went to court to collect loan debts over ten years old and obtained a judgment, it could not enforce the judgment against Social Security payments because of prohibitions against attaching or garnishing these funds.

V. THE GOVERNMENT'S INTEREST IN COLLECTING STUDENT LOANS IS NOT UNDERMINED BY A TEN YEAR LIMIT ON SOCIAL SECURITY OFFSETS

Enforcing the time limit in this case would eliminate just one small component of the government's overall student loan collection arsenal. Statistics from 2003, for example, show that the Department of Education collects the vast majority of

student loan funds through in-house and private contractor collection efforts. Substantial funds are also collected through the loan rehabilitation and consolidation programs. Of a total of about $324 million collected in fiscal year 2003, just over $10 million was collected through the Treasury Offset program, which includes both tax refund offsets and federal benefits offsets. Funds collected by guaranty agencies follow a similar pattern. Of almost $851 million collected by these agencies in fiscal year 2003, just over $6 million was attributed to Treasury Offset. United States Department of Education, Borrower Services/Collection Group, "Fiscal Year to Date Defaulted Student Loan Recoveries: As of December 31, 2003." (Available from the Department of Education). Most likely, although this is not clear from the data, only a small portion of this amount is comprised of funds collected from Social Security recipients beyond the ten year time limit.

Although the funds collected through Social Security offsets are small amounts for the government, they are huge for the most vulnerable Social Security recipients. Any reduction in benefits even of a relatively small magnitude may impose irreparable harm on vulnerable public assistance recipients. *Beno v. Shalala*, 30 F.3d 1057, 1063-64 n.10 (9th Cir. 1994). As the District Court noted in a case similar to Mr. Lockhart's case, the $99 monthly reduction in one of the plaintiffs' Social Security benefits "... may not be significant to the Government, or for that matter, to a large segment of the American population-- however, a 12% reduction in Mr. Edgmon's monthly benefits could be detrimental to his basic survival." *Guillermety v. Secretary of Education*, 241 F.Supp.2d 727, 758 (E.D. Mich. 2002).

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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